

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Section 20.18(i) of the Commission's	)	PS Docket No. 07-114
Rules Regarding Indoor Location	)	
Accuracy Reporting and Benchmarks	)	

**PETITION FOR BLANKET TEMPORARY WAIVER/EXTENSION OF TIME OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

Pursuant to Section 1.3<sup>1</sup> of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association (“NTCA”)<sup>2</sup> hereby submits this Petition for a Blanket Temporary Waiver/Extension of Time with respect to the initial June 2, 2017, certification deadline as adopted in a March 30, 2017, Public Notice<sup>3</sup> by the Public Safety and Homeland Security Bureau. As discussed herein, good cause exists to temporarily waive the impending certification deadline established pursuant to the Public Notice and Section 20.18(i) of the Commission’s rules regarding indoor location accuracy for 911 and related testing requirements for certain similarly situated providers.

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

<sup>3</sup> Public Safety and Homeland Security Bureau Provides Guidance to CMRS Providers Regarding Certification of Compliance with E911 Location Accuracy Requirements, Public Notice, PS Docket No. 07-114 and 17-78, DA 17-306 (rel. March 30, 2017) (“Public Notice”).

On March 28, 2017, NTCA filed comments<sup>4</sup> in support of an initial Petition for Temporary Waiver from Cordova Wireless, LLC (“Cordova”).<sup>5</sup> As evidenced by the eight other nearly identical petitions filed subsequently to Cordova’s request,<sup>6</sup> the issues raised by these several small, rural wireless carriers have applicability beyond the specific petitioners.<sup>7</sup> The Commission should therefore grant the pending petitions as soon as possible , and in the wake of such an order, adopt a broader industry waiver wherein any small, rural wireless carrier is not required to procure and implement new location accuracy technology until a reasonable time after the PSAPs within its service territory can receive and/or use indoor location accuracy data and Phase II Enhanced 911 (“ E911”) data, and present the wireless operator with valid service requests.

Section 1.3 of the Commission’s rules states that “rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”<sup>8</sup> The “good cause shown” standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest.<sup>9</sup> Generally, waiver of the Commission's rules is granted when both (i) special

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<sup>4</sup> Comments of NTCA (filed March 28, 2017).

<sup>5</sup> Petition of Cordova Wireless Communications, LLC for Temporary Waiver, PS Docket No. 07-114 (filed Feb. 3, 2017).

<sup>6</sup> *See*, Petitions of Docomo Pacific, Inc (March 30, 2017), Copper Valley Wireless, LLC (March 29, 2017), Bristol Bay Cellular Partnership (March 7, 2017), AST Telecom, LLC d/b/a Bluesky Communications (April 3, 2017), PTI Pacifica Inc (April 27, 2017), TelAlaska Cellular, Inc (May 22, 2017), Manti Tele Communications, Inc. (May 25, 2017), Windy City Cellular, LLC (May 30, 2017).

<sup>7</sup> If the Commission declines to grant a waiver as requested by NTCA, the Commission should treat this Petition as support for each of the individual waivers requests cited herein, or subsequently filed.

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.<sup>10</sup>

The nine requests for waiver filed by the time of this writing by small, rural wireless operators arise out of a substantially similar fact pattern – that the PSAPs within their service territories have not yet requested that the operator provide them with Phase II E911 service, or deliver Phase II location or indoor location data. However, unfortunately, while compliance with the Commission’s prior E911 requirements is triggered by a valid PSAP request for service,<sup>11</sup> the Commission’s indoor location accuracy rules operate *independently of* a PSAP request. Thus, as currently constituted, even in the absence of a PSAP request for or capability or desire to receive such service, the impending June 2 deadline imposes a substantial burden on small, rural wireless operators, resulting in a meaningless waste of scarce resources without furthering any public interest benefit

Good cause exists to deviate from the requirements of Section 20.18(i). The local PSAPs in question cannot currently receive or process the location data, and it would therefore be wasteful for small, rural wireless operators to expend limited resources to provide the PSAP such data before it can even be utilized. This is a special circumstance experienced by a limited number of small carriers, but the circumstance warrants a blanket waiver for all such similarly situated providers.

It is also in the public interest to grant the requested waiver. Small, rural wireless carriers operate under very difficult conditions, and do so with very limited resources and profit margin (if any). Operating in such conditions requires prioritizing network and other investment and

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<sup>10</sup> NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

<sup>11</sup> See, 47 C.F.R. § 20.18(f).

directing resources to only where they are urgently needed. Requiring small, rural carriers to invest in providing location data now that PSAPs cannot yet use would direct resources away from other needs and in effect “strand” the investment in sending location data into a “block hole” pending the local PSAP upgrading its own operations.<sup>12</sup> Such a result will strain a small carrier’s ability to provide quality service to end-users right now. As Cordova states in its Petition, the equipment needed to satisfy the requirements would reach into the tens of thousands of dollars – a substantial investment for Cordova and other carriers of similar size and resources.<sup>13</sup> A more efficient use of the operator’s resources would be to direct current network investment (in upgrades and maintenance) to where it is needed today and then invest in providing the PSAP with the required location data when the PSAP notifies the provider it is upgrading to be able to utilize such data.<sup>14</sup>

To be clear, NTCA strongly supports the public safety goals associated with the Commission’s indoor location accuracy and other E911 rules. It is noteworthy that grant of the request would in no way be detrimental to public safety or inconsistent with the purpose of the rule because the PSAPs affected by the waiver will be unable to utilize the data to provide indoor location 911 services to the community until they too have made the necessary upgrades at some

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<sup>12</sup> It is also a waste of company and Commission resources to require an individual waiver of each similarly situated provider.

<sup>13</sup> Cordova Petition, p. 4.

<sup>14</sup> In addition, NTCA has routinely advised the Commission of existing PSAPs which are not yet E911 Phase II capable, as now evidenced by Cordova’s petition, and asserted that before the Commission issues a new regulation to further upgrade 911 services, the Commission should ensure that all PSAPs throughout the nation are able to accept E911 information, and an adequate, sufficient, and long-term funding model is in place to assist PSAPs with implementation costs. See Comments of NTCA-The Rural Broadband Association, *In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket Nos. 11-153 and 10-255 at 6-7 (filed Mar. 13, 2013).

undetermined point in the future to utilize the location data. There is thus no potential harm whatsoever to the public if this waiver is granted.

NTCA's request for a temporary blanket waiver is consistent with the association's past advocacy. As NTCA has asserted in multiple proceedings related to public safety technology upgrades, small, rural wireless providers should not be required to meet new accuracy standards if the relevant PSAPs are unable to make use of that information.<sup>15</sup> Rather, an operator's technology upgrades should be triggered by a PSAP's readiness to receive and use the data provided by the wireless operator.

Moreover, as detailed by several of the petitioners, NTCA's request is consistent with prior Commission action. Indeed, the Commission initially recognized the public interest benefit discussed herein, thereby tying an operator's E911 requirements to a PSAP's ability to receive and make use of the data. However, the Commission subsequently issued an Erratum that removed this condition without explanation:<sup>16</sup>

In the Erratum, the limitation of 911 accuracy rules (i.e., to the extent that the PSAP has requested and is capable of receiving and utilizing the requested data) was changed... to apply only to Phase I, to Phase II outdoor rules, and to the c/u [confidence and uncertainty] requirements. Left missing from the no capable PSAP exception – without any explanation – was paragraph (i) – indoor location accuracy for 911 and testing requirements. This change is all the more curious because the same rule will only allow a

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<sup>15</sup> See Comments of the National Telecommunications Cooperative Association, *In the Matter of Wireless E911 Location Accuracy Requirements; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling; 911 Requirements for IP Enabled Service Providers*, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196 (filed Aug. 20, 2007). See also, *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket No. 11-153 and No. 10-255 (filed Mar. 11, 2013). And see Comments of NTCA-The Rural Broadband Association, *In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications Framework for Next Generation 911 Deployment*, PS Docket No. 11-153 and 10-255 (filed Apr. 4, 2014).

<sup>16</sup> Petition of Manti Tele Communications Company, Inc., at 3.

PSAP to request FCC enforcement of the indoor location requirements if it has “implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP.”

NTCA has demonstrated that its request for a blanket waiver is in the public interest and otherwise satisfies all standards for the grant of a waiver. In particular, the waiver meets Section 1.925(b)(3) of the Commission’s Rules, which specify general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings.<sup>17</sup> In addition, the association’s request meets the unique circumstances for a waiver as further defined for 911 issues specified in the Commission’s E911 proceeding.<sup>18</sup>

The record overwhelmingly supports NTCA’s request. The Commission should immediately grant the pending petitions, and adopt a broader industry waiver wherein a small, rural wireless carrier is required to procure and implement new location accuracy technology only within a reasonable period after the PSAPs within its service territory can receive and/or use indoor location accuracy data and Phase II E911 location data, and have presented the wireless operator with a valid service request. As explained herein, such an extension of the

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<sup>17</sup> Section 1.925(b)(3) of the Commission’s Rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings. The Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. 1.925 (b)(3).

<sup>18</sup> The Commission recognized that grant of a waiver is in the public interest where, as here, “special circumstances particular to smaller carriers may warrant limited relief from 911 requirements.” Such circumstances include “financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains).” *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules*, Order, 22 FCC Rcd 8927, at ¶ 7 (2007).

deadline will not in any fashion impede or undermine the Commission in its effort to ensure that PSAPs and first responders gain access to accurate data with respect to a caller's location.

For the foregoing reasons, the Commission should issue a waiver until such time as relevant PSAPs within a small, rural wireless operator's service territory are capable of receiving and using indoor location accuracy data.

Respectfully submitted,



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June 1, 2017